

## The Background Check Process and Governing Laws

- ▶▶ Limitations On When A CRA Can Provide Information To An End User
- ▶▶ Limitations On The Information That A CRA Can Provide To An End User
- ▶▶ Specific Procedures End Users Must Follow As Mandated By FCRA and State Laws

## Limitations On When A CRA Can Provide Information

- ▶▶ Must Be For Permissible Purpose

**§ 604. Permissible purposes of consumer reports [15 U.S.C. § 1681b]**

- (a) In general. Subject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other:
- (1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.
  - (2) In accordance with the written instructions of the consumer to whom it relates.
  - (3) To a person which it has reason to believe
    - (A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or
    - (B) **intends to use the information for employment purposes; or**
    - (C) intends to use the information in connection with the underwriting of insurance involving the consumer; or
    - (D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or
    - (E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or
    - (F) otherwise has a legitimate business need for the information
      - (i) in connection with a business transaction that is initiated by the consumer; or
      - (ii) to review an account to determine whether the consumer continues to meet the terms of the account.
  - (4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that
    - (A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;
    - (B) the paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws);
    - (C) the person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and
    - (D) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.



## Limitations On When A CRA Can Provide Information

- ▶▶ Includes Employment Purposes
  - ▶ Based On Guidance From Federal Trade Commission (FTC), Employment Purposes Includes Retention Of Independent Contractors/Consultants And Volunteers
  - ▶ Accordingly, FCRA Applies To Such Checks
  - ▶ Absent This Interpretation, CRA Arguably Not Permitted To Provide Report For This Purpose

## Limitations On When A CRA Can Provide Information

(b) Conditions for furnishing and using consumer reports for employment purposes.

(1) Certification from user. A consumer reporting agency may furnish a consumer report for employment purposes only if

(A) the person who obtains such report from the agency certifies to the agency that

(i) the person has complies with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable; and

(ii) information from the consumer report will not be used in violation of any applicable Federal or State equal opportunity law or regulation; and

(B) the consumer reporting agency provides with the report, or has previously provided, a summary of the consumer's rights under this title, as prescribed by Federal Trade Commission under section 609(c)(3) [§ 1681g].



## Limitations on When a CRA Can Provide Information

- ▶▶ Certification Of Compliance From End User
  - ▶ End User Certification
  - ▶ Notice To Users

# Limitations On Information A CRA Can Provide

## § 605. Requirements relating to information contained in consumer reports [15 U.S.C. § 1681c]

(a) Information excluded from consumer reports. Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

- (1) Cases under title 11 [United States Code] or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.
- (2) Civil suits, civil judgments, and records of arrest that from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.
- (3) Paid tax liens which, from date of payment, antedate the report by more than seven years.
- (4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.<sup>(1)</sup>
- (5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years**

(b) Exempted cases. The provisions of subsection (a) of this section are not applicable in the case of any consumer credit report to be used in connection with

- (1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$150,000 or more;
- (2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$150,000 or more; or
- (3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$75,000, or more.**



## Limitations On Information A CRA Can Provide

- ▶ Certain State Laws Impose Additional Information And Temporal Limitations On The Information A CRA Can Provide
  - ▶ Sex Offender Reporting Limitations
  - ▶ Restrictions On Reporting Older Convictions
  - ▶ Restrictions On Reporting Arrests
- ▶ Temporal Limitations Generally Do Not Apply To Educational Verifications